IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3412 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BALJIT PANNALAL MAURIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3412 of 2002

MR MM TIRMIZI for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

..... for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 17/06/2002

ORAL JUDGEMENT

Heard Mr. Tirmizi learned counsel for the petitioner and Mr. AY Kogje learned AGP for the respondent-State. Mr. Kogje has prayed for time so that

the respondents can file affidavit in reply. The detaining authority has also not filed affidavit in reply till date.

This matter was listed for admission on 20.3.2002 and thereafter it was again listed on 22.4.2002. Thereafter, on 26.4.2002 and 1.5.2002 this matter was listed for hearing. In view of the earlier order passed by this court, the respondents could have filed their affidavits in the month of April/may, 2002. According to Mr. Tirmizi, the case of the present petitioner is squarely coverred by the decision of this Court where this court has held that the delay caused in passing the detention order would vitiate the validity of the order. Of course, the otherside can explain the delay caused in passing the detention order. Considering this ground, the appropriate affidavit could have been filed now. So, the request for time made by ld. AGP is not accepted and the matter is heard finally.

It is contended by the petitioner that he has been found involved in a Prohibition Case registered at Pandesara Police Station, Surat being CR NO. 362/2001 for the offence punishable under sec. 66(1)(B), 65 etc. According to the prosecuting agency, the petitioner was found in possession of prohibited liquor worth Rs. 34,560/ packed in 864 bottles in two gunny bags. According to Mr. Tirmizi, this is a solitary case registered against the petitioner. The date of alleged offence is 5.3.2001. Of course, the detaining authority has also placed reliance on certain statements recorded on 13.4.2001 and verified by the detaining authority on 16.5.2001. The detaining authority has taken approximately one months time in verifying the statements.

Mr. Tirmizi has rightly placed reliance on a decision in the case of Elesh Nandubhai Patel vs. Commissioner of Police, Ahmedabad City & Ors., reported in 1997(1) GLH p. 381, wherein this Court has held that:

21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both

> unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a round of detention not proximate. If I am to buttress my findings, I would say the reference may be made to the decisionof the Supreme court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli. SCC 61."

The above quoted para also referes two decisions and both the decisions are of Apex Court. Placing reliance on this decision, this Court on 25.6.2001 while dealing with Special Civil Application No. 13125 of 2000 held that the delay of one month in passing the detention order from the last offence registered can be said to be a delayed order especially when the delay has remained unexplained.

Mr.Kogje has rightly argued that the State and the detaining authority either of these two or both could have explained the delay caused in passing the order. The relevant date 13.4.2001 should be considered as relevant as on that date the fact was brought to the notice of the police that the petitioner is involved in two other undisclosed offences. Having considered the contents of the statements and other relevant aspects, I do not find any substance in the say of Ld. AGP and, therefore, the submissions advanced by Mr. Tirmizi learned counsel is accepted. While consistently this court has said that the detentionorder should be passed in appropriate time and there should be reasonable explanation. In absnece of any explanation in the present case, the detention cannot stand and, therefore, the same requires to be quashed and set aside.

In the result, this petition is allowed. The impugned detention order dated 21.5.2001 is quashed and set aside. The detenu is ordered to set at liberty forthwith, if he is not required in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)

mandora/